

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## JAMES MICHAEL DENSMORE

Plaintiff,

Case No. C12-1444-RSM-MAT

V.

## REPORT AND RECOMMENDATION

## SNOHOMISH COUNTY, *et al.*,

## Defendants.

## INTRODUCTION AND SUMMARY CONCLUSION

16 This is a civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff originally  
17 filed this action in Snohomish County Superior Court and defendants removed the action to this  
18 Court. Plaintiff moves to remand the action to the Superior Court. Defendants oppose  
19 plaintiff's motion. Because it is clear from plaintiff's complaint that he has not adequately  
20 alleged any federal constitutional violation, plaintiff's federal claims should be dismissed and  
21 this action should be remanded to the Superior Court for disposition of plaintiff's state law  
22 claims.

## DISCUSSION

In July 2012, plaintiff James Densmore filed a complaint in Snohomish County Superior Court in which he alleges that Snohomish County sheriff's deputies and a Lake Stevens police detective failed to properly respond to reports that plaintiff's car had been stolen resulting in the permanent loss of the vehicle.<sup>1</sup> (*See* Dkt. No. 2 at 5-13.) Plaintiff alleges three causes of action in his complaint: (1) negligence; (2) dereliction of duty; and, (3) unlawful conversion. (*See id.*) Within those three causes of action, plaintiff alleged violations of both state and federal law. (*See id.*)

In August 2012, defendants City of Lake Stevens and Lake Stevens Police Detective Jeffrey Lambier removed the action to this Court on the grounds that plaintiff was seeking damages for deprivations of his federal constitutional rights and that jurisdiction was therefore appropriate in this Court under 42 U.S.C. §§ 1983 and 1988. (Dkt. No. 1.) Plaintiff now moves to remand the matter back to the Superior Court, noting that “This case is about the loss of property, an automobile. And the negligence of the police in handling the case.” (Dkt. No. 10-2 at 2.) The Lake Stevens defendants and the Snohomish County defendants oppose plaintiff’s motion for remand. (Dkt. Nos. 11 and 12.) Defendants argue that the case was properly removed to this Court and that this Court has no discretion to remand the case because jurisdiction over the subject matter of the action exists and was properly invoked. (*See id.*)

While this matter was removed to this Court because plaintiff alleged in his complaint violations of his federal constitutional rights, a review of the complaint reveals that plaintiff has

<sup>1</sup> Plaintiff identified as defendants in this action Snohomish County, the Snohomish County Sheriff's Office, and various employees of the Snohomish County Sheriff's Office. Plaintiff also identified as defendants in this action the City of Lake Stevens, the Lake Stevens Police Department, and Lake Stevens Police Detective Jeffrey Lambier.

01 not adequately allege any cause of action under § 1983. In order to set forth a *prima facie* case  
 02 under § 1983, a plaintiff must establish a deprivation of a federally protected right. *Baker v.*  
 03 *McCollan*, 443 U.S. 137, 140 (1979). The facts set forth by plaintiff in his complaint are  
 04 insufficient to establish a deprivation of any federally protected right.

05 Plaintiff alleges in his first and third causes of action that his federal constitutional rights  
 06 were violated when defendants caused him to be deprived of his personal property without due  
 07 process of law. Where a state employee's random, unauthorized act deprives an individual of  
 08 property, either negligently or intentionally, the individual is relegated to his state  
 09 post-deprivation process, so long as the state provides an adequate post-deprivation remedy.

10 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 540-41 (1981),  
 11 *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986).

12 Washington State provides a post-deprivation remedy for the alleged tortious conduct  
 13 of city and county employees under RCW 4.96. Plaintiff does not allege any due process  
 14 inadequacy in the tort remedy provided under RCW 4.96. Thus, plaintiff has not alleged a  
 15 viable federal due process claim with respect to the loss of his personal property.

16 Plaintiff also alleges in his first cause of action that in addition to violating his due  
 17 process rights, defendants "were negligent in violating the 'Equal Protection Clause' of the  
 18 Fourteenth Amendment of the United States Constitution." In order to establish an equal  
 19 protection claim under § 1983, a plaintiff must show that the defendants acted with an intent or  
 20 purpose to discriminate against him based upon membership in a protected class. *Barren v.*  
 21 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff does not allege any facts in his  
 22 complaint which would support an equal protection claim. And, in fact, plaintiff's allegation

01 that defendants acted negligently actually undermines any such claim. Accordingly, plaintiff  
02 has not alleged a viable equal protection claim.

03 CONCLUSION

04 Because the facts alleged by plaintiff in his complaint do not implicate federal  
05 constitutional concerns, and because it does not appear likely that the deficiencies in plaintiff's  
06 federal constitutional claims would likely be cured by amendment, this Court recommends that  
07 plaintiff's federal constitutional claims be dismissed pursuant to 28 U.S.C. § 1915A. This  
08 Court further recommends that supplemental jurisdiction over plaintiff's remaining state law  
09 claims be declined and that this case be remanded to the Snohomish County Superior Court for  
10 disposition of those claims. A proposed order accompanies this Report and Recommendation.

11 DATED this 27th day of December, 2012.

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14 Mary Alice Theiler  
United States Magistrate Judge  
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